

# Memorandum

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## DOJ Issues Favorable Business Review Letter to ISDA

October 5, 2020

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On October 1, 2020, the U.S. Department of Justice Antitrust Division (“DOJ”) issued a favorable business review letter to the International Swaps and Derivatives Association Inc. (“ISDA”) regarding ISDA’s plans to amend its standard documentation for derivatives to account for the potential discontinuation of certain interbank offered rates (“IBORs”). In their letter, the DOJ noted that “ISDA’s proposal has the potential to offer substantial benefits to the financial services industry.”

For more than two years, ISDA worked closely with a broad range of regulators and industry participants to develop a fallback methodology to account for the potential discontinuation of IBORs. One of the most widely-used interest rate benchmarks, USD LIBOR is estimated to be referenced in \$200 trillion in financial contracts, and thus the potential discontinuation of LIBOR without a robust fallback in place poses a serious systemic risk to the global economy. Because many derivatives transactions are documented using the ISDA’s Master Agreement and standard definitions, including the 2006 ISDA Definitions, the revision of ISDA’s standard documentation is a critical step in preventing market disruption in the event that key IBORs, including USD LIBOR, are discontinued.

As the result of a series of public market consultations that featured robust procedural safeguards, ISDA developed a supplement to amend the 2006 ISDA Definitions to incorporate fallback rates for certain IBORs, as well as a protocol that market participants may use to apply fallback rates to legacy contracts. Assistant Attorney General Makan Delrahim noted in the DOJ’s press release that “ISDA’s process, including its cooperation with government regulators and its consultation-driven process for obtaining feedback from industry participants, has had the effect of clarifying the practical issues involved in planning for when LIBOR and other IBORs are no longer available and preparing for a smooth transition away from IBORs to other reference rates.”

The DOJ’s business review letter highlighted that ISDA’s efforts will likely have “substantial procompetitive benefits” by offering increased predictability, efficiency and stability of the financial system. In particular, the DOJ noted that the proposed supplement and protocol offer predictability and certainty of rate calculations for derivative contracts, as well as uniformity with rates developed for non-derivative products that improves the stability of the financial system.

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